HISTORY OF RELIGIOUS FREEDOM IN THE USA

When Roger Williams, the founder of the state of Rhode Island, included a guarantee of religious liberty in the Constitution of that state, it became the first state ever to do so. This led to the first Sabbath-keeper migrating to the United States. In 1664, Stephen Mumford arrived in Rhode Island. He had fled his native England fearing the same fate as John James who three years earlier, in 1661, had refused to cease preaching on the Sabbath day, at the command of the sheriffs of King Charles II. He was convicted of high treason and hanged, drawn, and quartered. Mumford spread his convictions and eventually the Seventh Day Baptist church was established in America.

Roger Williams had himself been banished from Massachusetts in 1631 because he had declared his opinion that the magistrate might not punish a breach of the Sabbath (Sunday) Winthrop's Journal, Vol. 1, pp. 52,53, cited in American State Papers, Third Edition, p. 57, Review and Herald Publishing Association, 1943.

Despite the fact that a large number of immigrants arriving in the United States during its founding days were escaping religious persecution themselves, they afforded little religious liberty to those who were of minority faiths within their own borders. Many of the original states breached the religious liberties of citizens who desired only to worship God as their consciences dictated. The Congregational Church in Massachusetts, the Methodists in Kansas, and the Church of England (Episcopalian) in Virginia had particularly poor records of religious liberty in the early days, and even the early Quaker settlers in Pennsylvania were not convinced of the concept of religious liberty in their colony.

The inclusion of the guarantee of religious liberty and the separation of church and state into the First Amendment of the United States Constitution was a great step forward in the provision of religious liberty for the citizens of the United States. Yet over and over again it failed to prevent the states from enacting and enforcing Sunday laws in the nineteenth century. The record of the

United States in that century was poor. Many virtuous persons were jailed, even placed in chain gangs or ruined financially, simply because they failed to desist from work on Sunday.

In the 1880's, Senator Blair of New Hampshire promoted Sunday legislation in the U.S. Senate with great vigor, but without success. However, it was in the nineteenth century that the ground was laid by the judiciary of the United States to open the way for widespread Sunday laws, despite the protection of religious liberty afforded under the First Amendment. Indeed, the ingenuity of the proponents of Sunday legislation in the judiciary knew no bounds in their desire to enforce such laws by circumventing the First Amendment. This should be a lesson to all Americans today.

Many believe that before Sunday laws are once more placed in force, that it would be necessary to undertake the very difficult process of repealing the First Amendment. But the history of the nineteenth century stands as a testimony that, with no little guile, the justices of various courts, were able to distort fact and claim that Sunday laws were not religious in nature. Such claims may convince the unthinking, but in reality are simply self-serving subterfuges to circumvent the clear intent of the First Amendment.

Chief Justice Stephen Field of the California Supreme Court, had, in 1858, prior to his elevation to the highest judicial post in the state, introduced a sham reasoning to ease the way for decisions in favor of Sunday legislation. As attorney Warren Johns states, Field, aware that Sunday laws rested on shaky ground if justification was tied to religious purposes... offered constitutional refuge to blue laws [Sunday laws] by treating them as civil rather than religious legislation (Warren Johns, Dateline Sunday, Pacific Press, 1963, pp. 84,85).

Since Field was later elevated to the Supreme Court of the United States, his legal ploy was carried into that court. Field asserted that health and welfare benefits would result from a weekly rest day. This form of promotion has now surfaced in countries such as Australia, the Netherlands, and Norway. In Nebraska, the move for a Sunday law was rooted on the grounds that it made the state "family friendly" (Lincoln Sunday Journal Star, March 1, 1998). Further as we have seen, the Pope's Apostolic Letter, Dies Domini, has advocated Sunday civil legislation on the grounds of its benefits for servants and workers.

But a serious student of these moves to Sunday legislation will not be deceived. They are religious, strictly religious. The fact that the moves arise from Roman Catholic and Protestant sources should deceive no one. Make no mistake, the chief victims of Sunday law enforcement have always been religious minorities. It must not escape the notice of the wise that although civil penalties have been invoked for breaches of Sunday laws, no such penalties have been enacted for failure to rest on civil rest days such as national holidays.

When was anyone prosecuted for failure to rest on the fourth of July or Martin Luther King day? If a government believes that at least one day of rest is essential per week for all citizens, what purpose can there be in confining that day to Sunday? Surely the citizen should be afforded the privilege of choosing such a day at his convenience. Does a rest on Sunday ensure better health than a rest on Monday? The answer is that all Sunday laws proscribing labor are religious and in the United States do breach the First Amendment of the American Constitution.

Even as recently as 1932, A deputy sheriff [in Virginia] arrested two Seventh-day Adventists for Sunday work, one; a crippled mother who walked on crutches, for washing clothes on her own premises, and the other, a man who donated and hauled a load of wood to church to heat it for religious services (American State Papers, op. cit., p. 567).

In 1926 a spy saw a man pressing his trousers on Sunday in Baltimore,
Maryland. He was fined. In Georgia in 1930, police arrested a Bible colporteur for delivering a book of Bible exposition on Sunday, yet assisted a circus to set up and permitted an airplane to give joy rides on the very same day (Warren Johns, op. cit., p. 114). We need not be deceived. Sunday laws are aimed primarily against religious
dissenters. Numerous other such cases are extant and have been documented in Warren Johns' masterly book.

The history of the enacting of religious laws by governments, the union of church and state, is a very explosive one. Inevitably, such legislation leads to deprivation of religious liberty and persecution of minorities. Governments possess one right and one right alone in religious matters the protection of the religious liberty of all their citizens. Happy is the nation where the government confines its religious legislation to that single prerogative.

Rightly, in 1959, the Federal Court found that the Massachusetts Sunday laws were religious. But in 1962, the Supreme Court of the United States ruled by an 8-1 majority that Sunday laws did not breach the First Amendment. This was an incredible decision and a most dangerous one. This decision has not been revoked or overturned.
It stands ready for and favorable to the enactment of Sunday laws. The First Amendment has proved to be little protection, in these last days, against the promotion of the sectarian convictions of the majority and the revoking of religious liberty of all. The United States stands well-positioned to assist the first beast power in enforcing Sunday observance.

In presenting the majority decision, Chief Justice Earl Warren claimed that to say that states cannot prescribe Sunday as a day of rest for these [secular] purposes solely because centuries ago such laws had their genesis in religion would give a Constitutional interpretation of hostility to the public welfare rather than one of mere separation of church and state.

He went on to write, It is common knowledge that the first day of the week has come to have special significance as a day of rest in this country. People of all religions and people of no religion regard Sunday as a time for family activity, for visiting friends and relatives, for late sleeping, for passive and active entertainment, for dining out and
the like.... Sunday is a day apart from all others. The cause is irrelevant; the fact exists. It would seem unrealistic to require a state to choose a common day of rest other than that most persons would select of their own accord (Case McGowan v. Maryland).

Despite the assertion of this eminent jurist, the cause is most decidedly not irrelevant. The cause denotes a sorry history of religious persecution. In any case, what business is it of a state to enforce any day as a day of rest for all citizens?

Justice Felix Frankfurter also wrote an opinion in this case, in support of the majority decision. He implausibly acknowledged that –the earlier among the colonial statutes were unquestionably religious in purpose.... But even the seventeenth century legislation does not show an exclusive religious preoccupation.

Only Justice William Douglas dissented in the four Sunday law cases adjudged in 1961 (Gallagher v. Crown Kosher Supermarket; McGowan v. Maryland; Two Guys from Harrison v. McGinley; Brownfeld v. Brown). Justice Douglas asserted, quite properly, in his dissenting opinion that Sunday laws did in fact breach both the establishment clause (that is, the prohibition of the State establishing a religion) and the free exercise clause (the right of all citizens to exercise their faith freely) as enshrined in the First Amendment. He well stated that–

The First Amendment commands government to have no interest in theology or ritual; it admonishes government to be interested in allowing religious freedom to flourish whether the result is to produce Catholics, Jews or Protestants, or to turn the people toward the path of Buddha, or to end in a predominately Moslem nation, or to produce in the long run atheists or agnostics!

In citing the protection of the religious liberty of all citizens, Justice Douglas expressed a dictum of great wisdom.

But Justice Douglas' opinion, expressed so cogently and with great wisdom, did not prevail. Americans remain under the judicial imposition that Sunday laws do not breach the First Amendment, despite the fact that they clearly do.

In recent years two other major decisions of the Supreme Court have further positioned the United States to fulfill the actions of the second beast of Revelation, while God does not predestinate, He does foresee the future with equal clarity as He does the past and present.

On April 17, 1990 in the case of Smith v. the State of Oregon, the Supreme Court by a 5-4 majority effectively removed the religious liberty of every citizen. The case itself is not so much of interest. It concerned American Indians who treated fellow American Indians for various ailments including drug abuse. They were employed by the State of Oregon. It was discovered that these health workers were themselves taking a drug, peyote, in pagan religious rites to which they adhered. Consequently the state fired them. They ultimately appealed to the Supreme Court, claiming that their First Amendment rights had been breached.

They lost the case. What did concern those who value religious liberty was that in his majority opinion Justice Antonin Scalia went far beyond the case and declared that
when religious rights clash with the government's need for uniform rules, the court will side with the government (Los Angeles Times, April 18, 1990).

In commenting the newspaper stated, the Supreme Court Tuesday forcefully declared that it would no longer shield believers whose practices violate general laws (Ibid.).

Following the Civil War, the Fourteenth Amendment had been added to the United States Constitution. It stated in part, that No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The Amendment, as time passed, was interpreted to protect citizens from state legislation which was in conflict with the United States Constitution. By 1925 the United States Supreme Court had decreed that First Amendment guarantees were applicable to state and local government through the provisions of the Fourteenth Amendment (Warren Johns, op. cit., p. 113).

Such support of the First Amendment by the Fourteenth Amendment led the Supreme Court, in the 1940's, to uphold the right of Jehovah's Witnesses refusing to salute the flag. In 1986 the Supreme Court told the states that they could not deny unemployment benefits to Seventh-day Adventists who refused to work on Saturdays (Los Angeles Times, April 18, 1990).

In 1972, the U.S. Supreme Court exempted Amish children from compulsory school laws.

But subsequently, the 1990 Smith decision was antagonistic to all such decisions. Justice Sandra Day O'Connor, presenting the dissenting opinion of the four Supreme Court justices who objected to Justice Scalia's opinion, (even though she herself was one of the six justices who denied the Smith claim for reinstatement), stated that Justice Scalia's opinion is incompatible with our nation's commitment to individual religious liberty. In my view, the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility (Los Angeles Times, April 18, 1990).

In this opinion, Justice O'Connor was absolutely correct. The majority decision was an affront to religious liberty in the United States.

President Bill Clinton attempted to redress the issue through legislating a bill to restore religious liberty and although it passed Congress, it was struck down by the Supreme Court.

Did the Smith v. the State of Oregon decision have practical implications in respect of the deprivation of religious liberty of American citizens? Most definitely it did. Those effects were rapid. Only just over ten months later, the Washington Post, March 9, 1991, listed numbers of cases where citizens were deprived of their religious liberty by the court's majority opinion in the Smith case.

The most glaring example is that of the Yang case. The Yang family had migrated to the United States from Laos. They were Buddhists. Tragically their 23-year-old son died of natural causes. The physician requested an autopsy, but the parents refused permission since the Buddhist faith opposes such procedures. Ignoring the parents' prohibition, the physicians performed the post-mortem. The Yangs sought compensation on the grounds that "the forced autopsy infringed on their religious freedom" (Ibid.). In January, 1990, U.S.

District Judge Raymond J. Pettine upheld their claim. We observe that this decision was delivered three months prior to the Smith decision of the Supreme Court. No decision was made at that time in respect of damages. Ten months later, when Pettine was deciding how much money the family should be awarded, the judge announced "with deep regret" and "the deepest sympathy for the Yangs" that the Smith decision had forced him to reverse his ruling" (Ibid.).

The Yangs clearly had been deprived of their religious liberty by the Smith decision. Their claim had been upheld three months before that decision and negated seven months after the decision. Ironically this decision was taken in the state of Rhode Island, where Roger Williams had been the seventeenth-century trailblazer in guaranteeing religious liberty to its citizens.

A Jewish woman in Michigan lost a similar case under the Smith decision when an autopsy was performed on her son. The Jewish faith forbids autopsies. A Moslem prison inmate in Illinois lost his petition to be served a diet devoid of pork on the same grounds (Ibid.). Numbers of other cases were listed. The Smith decision did override the First Amendment protections and thus made it almost ineffectual. The United States has virtually reached the stage of the incredible decision of the Supreme Court of the State of New Jersey which found, in the case, State of New Jersey v. Perricones (1962), that "the freedom of religion guaranteed in the First Amendment to the United States Constitution was the freedom of belief, not the freedom of practice, and religious practices could be controlled by the state" (Montie Barringer, Insight, August 2, 1977). To provide the right of belief but not of practice is to provide only that liberty which cannot be taken from the individual, for it is a matter of the mind.

Referring to the Smith case, Forest Montgomery, counsel for the National Association of Evangelicals stated that the problem with the [Smith] decision is that the United States Supreme Court has gutted the free exercise of the First Amendment (Washington Post, March 9, 1991).

Thus the Supreme Court has now put in place a decision which would permit the government, if it felt a compelling reason to do so, to trample the consciences of sabbathkeepers.

Further, on March 26, 1991, the Supreme Court removed the protection afforded under the Fifth Amendment of the U.S. Constitution. The case concerned the death penalty imposed upon Oreste Fulminante by an Arizona court. Fulminante had confessed murder of his 11-year-old stepdaughter to a fellow inmate working as a government informant (Washington Post, March 27, 1991).

He appealed to the Supreme Court on the grounds that his confession was coerced. By a 5-4 majority, the Supreme Court held that Fulminante's confession had been coerced and his appeal was upheld. One would have thought that the result would simply have been that the trial verdict would be quashed and a new trial would be called at which the confession would have been inadmissable. However, the justices once more went far beyond the case itself and voted that some convictions may be allowed to stand despite the case of confessions obtained in violation of the defendant's constitutional rights (Ibid., emphasis supplied).

The Fifth Amendment guarantees that no coerced confession is admissible evidence of guilt in a trial. This has been interpreted to include psychological coercion as well as physical torture. In

writing the majority opinion, Chief Justice William Rehnquist spoke of "harmless error" in admitting such evidence before a court. It is difficult to describe the use of a coerced confession as harmless. One of the justices, Anthony Kennedy, credibly stated that other than a videotape of the crime one would have difficulty in finding evidence more damaging to a criminal plea of innocence than a confession (Ibid.).

It seems unconscionable that Supreme Court justices boldly state that "the use of confessions in violation of the defendant's constitutional rights" is sometimes acceptable in a criminal case. Decisions such as this place the judiciary above the Constitution, to which they should be subject.

It is little wonder that Justice Byron White, writing for the dissenting justices stated that, Permitting a coerced confession which could be part of the evidence on which a jury is free to bare its verdict of guilty is incompatible with the thesis that ours is not an *inquisitional system* of criminal justice (Ibid., emphasis added).

White's use of the word "inquisitional" was perfectly justifiable for surely all use of coercion in order to extract a confession harks back to the days of the inquisition.

The Jewish system of justice two thousand years ago accepted no confession of guilt as evidence in criminal trials. This judicial rule applied whether the accused was subject to coercion or freely made such a confession. This was a wonderful protection for often it is difficult to prove a confession to be coerced. While at Christ's trial Caiaphas in desperation used Christ's confession that He was the Son of God in order to convict Him of blasphemy, he did so in breach of the Jewish law.

But Jesus held his peace. And the high priest answered and said unto him, I adjure thee by the living God, that thou tell us whether thou be the Christ, the Son of God. Jesus saith unto him, Thou hast said: nevertheless I say unto you, Hereafter shall ye see the Son of man sitting on the right hand of power, and coming in the clouds of
heaven. Then the high priest rent his clothes, saying, He hath spoken blasphemy; what further need have we of witnesses? Behold, now ye have heard his blasphemy (Matthew 26:63-65).